

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

JOHN RANDALL QUINTERO,

Plaintiff and Appellant,

v.

ADRIANA QUINTERO, as Trustee, etc.,

Defendant and Respondent.

A134108

**(Marin County
Super. Ct. No. PRO092394)**

John Randall Quintero purports to appeal from a December 5, 2011 order of the Marin County Superior Court denying his motion for reconsideration of an August 8, 2011 order of the same court. The latter order denied his petition to remove respondent Adriana Quintero as trustee of the Rudolph Quintero Portion of the Rudolph and Angela Quintero Revocable Trust (the Trust).¹

John, who is proceeding in propria persona, presents the following issue for our review: “Did the Marin County Probate Court abuse its discretion by refusing to investigate the allegations of the controversy, thus denying substantive due process to the appellant beneficiary?” We conclude we cannot reach the question because John’s appeal is untimely.

¹ Because the interested parties in this litigation all have the same last name, we will refer to them by their first names for ease of identification. In so doing, we intend no disrespect.

FACTUAL AND PROCEDURAL BACKGROUND

The Trust was executed on February 2, 2006, by Rudolph Quintero. John is Rudolph's son, and Adriana is Rudolph's daughter. Article IV of the Trust named Adriana as sole successor trustee of the Trust if Rudolph should become unable or unwilling to serve in that capacity. Rudolph died on October 27, 2006, and Adriana became the successor trustee.

On May 13, 2009, Adriana filed a petition for instructions regarding the discretionary distribution of trust assets pursuant to Probate Code section 17200, subdivision (b)(6). The petition alleged John was incarcerated and had requested that Adriana distribute all funds owing to him. Adriana refused to make the distribution, because John had not shown how the distribution was necessary for his health, support, maintenance, or education, a showing necessary to satisfy the terms of the Trust. Adriana therefore asked for an order of instruction stating she was prohibited from making the requested distributions unless she had a good faith belief they were necessary for John's "health, support, maintenance and/or education" and those needs were not being met by other sources. John filed objections to the petition.

On July 6, 2009, after a hearing, the trial court granted Adriana's petition. In its order after hearing, the court found it was not an abuse of Adriana's discretion as trustee to refuse to make the distribution. The court's minute order stated: "The relief requested has not subjected this trust to continuing court supervision. Case is disposed." No appeal was taken from that order.

On May 24, 2011, John filed a petition in propria persona to remove Adriana as trustee, for appointment of co-trustees, to compel "redress of breach of trust," and to direct transfer of the trust. The court held a hearing on John's petition on August 8, 2011, at which John appeared by telephone. The minute order reflects that the court denied the petition.

On September 1, 2011, John moved for reconsideration of the order denying his petition to remove Adriana as trustee. On December 5, 2011, the trial court appears to

have reopened the case, denied the motion for reconsideration, and then dismissed the matter.

John filed a notice of appeal on December 21, 2011.

DISCUSSION

John first contends the trial court denied him a fair hearing because it allegedly failed to consider certain attachments to his objections to Adriana's petition for instructions. He also claims the subsequent hearings were deficient because the court did not ask him a sufficient number of questions and did not ask Adriana to answer any of his allegations. Before we may address these arguments, we must consider whether they are properly before us.

Under Code of Civil Procedure section 904.1, subdivision (a)(10), a party may appeal to the Court of Appeal "[f]rom an order made appealable by the provisions of the Probate Code" Probate Code section 1304, subdivision (a) makes appealable the grant or denial of "[a]ny final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9" Thus, the grant of an order to instruct a trustee under Probate Code section 17200, subdivision (b)(6) is appealable. (See *Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 522 [Probate Code permits appeal to be taken from any final order under Probate Code section 17200 et seq.])

The trial court granted Adriana's petition for instructions under Probate Code section 17200, subdivision (b)(6). A final order under that provision is appealable, and here, the trial court's minute order noted that the case was "disposed." The trial court's order was entered on July 6, 2009, and thus the very last day on which an appeal could have been filed from that order was January 4, 2010. (Cal. Rules of Court, rule 8.104(a)(1)(C), (e).) John did not file a notice of appeal until December 21, 2011, so we have no jurisdiction to consider any argument relating to the trial court's order granting Adriana's petition for instructions.

Like the order granting Adriana's petition for instructions, the order denying John's petition to remove Adriana as trustee, to compel redress of a breach of trust, and to direct transfer of trust property is also appealable. The petition sought relief under

Probate Code section 17200, subdivisions (a)(10), (12), and (16), and its denial is thus appealable under Probate Code section 1304, subdivision (a). (*Esslinger v. Cummins*, *supra*, 144 Cal.App.4th at p. 522.)

John did not appeal from that order, however, and instead filed a motion for reconsideration under Code of Civil Procedure section 1008. The order denying his motion for reconsideration is not itself appealable, because it is not among the orders specifically made appealable by the Probate Code. (*Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1126.) Thus, we may consider John's appeal only if it can be construed as a timely appeal from the denial of the underlying order for which reconsideration was sought. (See *Hughey v. City of Hayward* (1994) 24 Cal.App.4th 206, 210.)

The trial court denied John's petition on August 8, 2011. John moved for reconsideration on September 1, 2011.² Assuming this motion was valid, and Adriana does not argue otherwise, this extended the time for filing an appeal of the August 8 order. (Cal. Rules of Court, rule 8.108(e).) But under the applicable rule, the time to file a notice of appeal was extended only "until the *earliest* of: [¶] (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; [¶] (2) *90 days after the first motion to reconsider is filed*; or [¶] (3) 180 days after entry of the appealable order." (Cal. Rules of Court, rule 8.108(e), italics added.) Thus, John was required to file his notice of appeal no later than 90 days after September 1, 2011, or approximately December 1, 2011. His December 21, 2011 notice of appeal is therefore untimely, and we have no jurisdiction over his appeal from the order denying his petition to remove Adriana as trustee. (Cal. Rules of Court, rule 104(b).) Accordingly, we must dismiss this appeal. (*Ibid.*)

² The clerk's transcript does not reflect when notice of the court's August 8, 2011 order was mailed. Thus, we cannot determine whether John's motion for reconsideration was made within the 10-day time limit set forth in Code of Civil Procedure section 1008, subdivision (a). In light of our disposition, however, we need not explore that question further.

DISPOSITION

The appeal is dismissed. Costs to respondent. (Cal. Rules of Court, rule 8.278(a)(3).)

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.